

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff

v.

DARNELE NELSON,

Defendant

Case No.: 2:20-cr-00195-APG-EJY

**Order Denying Defendant's Motion for
Sentence Reduction**

[ECF No. 88]

Defendant Darnele Nelson filed a pro se motion for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A). ECF No. 88. The United States opposes the motion and contends it should be construed as a motion under 28 U.S.C. § 2255 because it challenges Nelson's conviction and sentence. ECF Nos. 90, 92. Out of an abundance of caution and in deference to Nelson's reference in the motion to § 3582(c), I will not construe his motion as one under § 2255, in order to avoid the potential negative consequences to Nelson's ability to file a later § 2255 motion.

The compassionate release statute 18 U.S.C. § 3582(c) authorizes courts to reduce a defendant's prison term only "after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier" 18 U.S.C. § 3582(c)(1)(A). Nelson has not shown that he has exhausted his administrative remedies through the Bureau of Prisons. Therefore, his motion is procedurally barred. And even if I consider the merits of the motion, Nelson has not presented "extraordinary and compelling reasons" to justify relief, as is required under 18 U.S.C. § 3582(c)(1)(A)(i). I therefore deny Nelson's motion for a reduction of his sentence.

1 Nelson may be able to request relief through a habeas petition under 28 U.S.C. § 2255.
2 The Government does not believe such a motion would be successful (ECF No. 92 at 2 n.1), and
3 I take no position on that at this time. But he does not qualify for relief under 18 U.S.C.
4 § 3582(c) so I must deny the motion.

5 I THEREFORE ORDER that Nelson's motion for reduced sentence (**ECF No. 88**) is
6 **denied.**

7 DATED this 25th day of September, 2024.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE